



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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March 22, 1955

B-120773

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Dear Mr. Secretary:

Reference is made to your letter of July 20, 1954, requesting to be advised whether funds appropriated for the expenses of the Civil Aeronautics Administration activity involved are available to pay the costs of medical examinations, investigations, and related activities concerning claims which may arise in foreign countries based on acts or omissions of employees of the Civil Aeronautics Administration.

It is explained in your letter that employees in field offices located in many foreign countries occasionally become involved in accidents which result in claims against the United States based on personal injury or death or property damage. Where an accident causing personal injury to or death of a non-American occurs in a foreign country in which the United States exercises extraterritorial jurisdiction and the amount of the claim does not exceed \$1,500, the Secretary of State is authorized by the act of February 13, 1936, 49 Stat. 1138, 31 U.S.C. 224a, to consider, adjust, and determine such claim and to certify the amount allowed to the Congress for appropriation. However, it is also stated that claims involving property damage of sufficient amount may arise for which private petitions for relief may be presented to the Congress.

Accordingly, it is stated to be administratively desirable, in certain cases which may be within the provisions of 31 U.S.C. 224a or for which private relief bills might be presented to the Congress, to expend funds for medical examinations, investigations, and other related expenses in order to provide an intelligent report of the facts regarding an incident which might be made the subject of a future claim against the United States.

As stated in letter to you of August 17, 1954, your letter was forwarded to the Department of State for an expression of the Department's views in the matter. In reply of January 25, 1955, the Assistant Secretary of State reported that at the present time Morocco is the only country in which the United States exercises extraterritorial jurisdiction and, consequently, relatively few cases now arise under the provisions of 31 U.S.C. 224a.

Claims of \$1,000 or less, arising in foreign countries as a result of damage to, or loss of, privately owned property caused by the negligence of an officer or employee of the Government acting within his scope of employment, are for consideration by the head of the department concerned under the provisions of the act of December 28, 1922, 42 Stat. 1066. While such act was repealed by section 424(a) of the Federal Tort Claims Act, 60 Stat. 846, section 424(b) of the latter act provides that nothing contained therein shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim not cognizable under part 2 of the Federal Tort Claims Act. Claims arising in foreign countries are not cognizable under part 2. Hence, the 1922 act remains in effect insofar as claims arising in a foreign country are concerned. Consequently, with respect to such claims which may be settled under the 1922 act by your Department, funds appropriated to your Department are clearly available to investigate and ascertain the facts relating thereto. See 29 Comp. Gen. 111.

Regarding claims based on personal injury or death (except those which may come within the provisions of 31 U.S.C. 224a) and claims for property loss or damage in excess of \$1,000 which are not cognizable under the act of December 28, 1922, supra, the Department of State reports that such claims generally are handled by the Department of State as diplomatic claims through diplomatic channels. Relative to such diplomatic claims the Assistant Secretary of State reported that--

"It has been the experience of the Department that in certain cases independent medical examinations and further investigation would greatly assist the Department in reaching a final decision in those cases. In view of this experience, it is believed that it would be in the best interests of the Government if expenses of medical examinations and investigations, and related expenses, could be incurred by the agency involved in those cases in which it is administratively determined to be necessary. As a result, the agency would be provided with a full and complete record of the incident and would then be in a better position to determine the Government's liability."

In view thereof, and while funds appropriated to the Civil Aeronautics Administration are not specifically available for the purposes considered herein, it would appear to be not only desirable but also the duty of the Administration to ascertain the true facts

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with respect to an incident involving Administration employees in order to protect the United States against the payment of excessive claims or claims having no basis in fact. Consequently, in those cases in which it is determined that the facts relating to any particular incident which might result in a claim against the United States may be ascertained only by an administrative investigation, funds appropriated to the Administration properly may be considered as being available to defray the costs of such investigation and related activities.

Sincerely yours,

FRANK H. WEITZEL

Assistant

Comptroller General
of the United States

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The Honorable
The Secretary of Commerce